

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAN L. WHITNEY, JANET R.
HADLEY, MARGARET A. KORNOW-
BROWN, ERIC BRELLE,

Plaintiffs,

v.

CHARLES WURTZ, VERISCAPE, INC.,
RENEE TADLOCK, REGINA
RYGELIS, WILL ARNTZ, SAM
JACOBS, GARY BERKOWITS, BRIAN
ROE and DOES 1-20,

Defendants.

Case No.: C 04-5232 PVT

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
VERISCAPE'S MOTION TO
COMPEL FURTHER RESPONSES
TO DEMANDS FOR PRODUCTION
OF DOCUMENTS**

I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs Dan L. Whitney, Janet R. Hadley, Margaret A. Kornow-Brown and Eric Brelle (collectively, "Plaintiffs") allege breach of contract, termination, and deceit by lying about the financial health of the company against their former employer, Veriscape, Inc.¹ The Complaint also alleges that Defendants Charles Wurtz, Renee Tadlock, Regina Rygelis, Will Arntz, Sam Jacobs, Gary Berkowits, and Brian Roe are liable as the alter ego of Defendant Veriscape.

¹ The holding of this Court is limited to the facts and the particular circumstances underlying the present motion.

1 On February 6, 2007, the parties appeared before Magistrate Judge Patricia V. Trumbull
2 for hearing on Defendant Veriscape's Motion to Compel Further Responses to Demands for
3 Production of Documents. Prior to production of the documents at issue, Defendants Veriscape,
4 Arntz, and Jacobs each served separate requests for production upon the four Plaintiffs
5 individually. Therefore, each Plaintiff had three sets of requests for production of documents
6 awaiting a response. Rather than respond separately to each of these twelve sets of requests for
7 production, Plaintiffs responded collectively with one computer disk and a stack of paper
8 documents.

9 On November 20, 2006, Defendant Veriscape filed its Motion to Compel Further
10 Responses to Demands for Production of Documents. On December 21, 2006, Plaintiffs filed
11 their opposition. No reply brief was filed. Defendant Veriscape's motion seeks to compel
12 Plaintiffs to organize the documents to separate each Plaintiff's response to each of Veriscape's
13 nineteen numbered demands.

14 IT IS HEREBY ORDERED that Defendant Veriscape's motion is granted in part and
15 denied in part as follows.

16 II. DISCUSSION

17 In April 2006, Veriscape served each Plaintiff with a separate set of requests for
18 production of documents. Each set of requests contained the same nineteen numbered demands.
19 On June 19, 2006, Defendant Veriscape's counsel, Mr. Baker, and Plaintiffs' counsel, Mr. Beck,
20 had a conversation. Following the conversation, Defendant Veriscape's counsel sent Plaintiffs'
21 counsel a letter confirming that Defendant Veriscape agreed to give Plaintiffs a two week time
22 extension to respond to production requests and in return, Plaintiffs "agreed that if the
23 documents are produced on disk, that a separate disk will be used for each Request to Produce."
24 (Defendant Veriscape's Motion to Compel, Exhibit E).

25 On July 5, 2006, Plaintiffs' counsel sent Mr. Baker a letter complaining that Defendants'
26 previous responses to requests for production were unacceptable. The letter stated, "I am not
27 going to press for a more definite response as long as my clients are not pressed for a more
28 definite response." (Beck Decl. ¶ 6). Defendants did not respond to Plaintiffs' July 5, 2006

1 letter, and Plaintiffs did not follow up.

2 **A. Standard**

3 Under the Federal Rules of Civil Procedure, “[a] party who produces documents for
4 inspection shall produce them as they are kept in the usual course of business or shall organize
5 and label them to correspond to the categories in the request.” Fed. R. Civ. P. 34(b).

6 **B. Plaintiffs’ Document Production**

7 1. Electronic Document Production

8 On July 17, 2006, Plaintiffs produced one computer disk to all Defendants’ counsel. The
9 accompanying letter stated that the disk contained electronic documents responsive to requests
10 for production by Veriscape, Arntz, and Jacobs.

11 In the motion, Defendant Veriscape argues that Plaintiffs should comply with the terms
12 of the original agreement and provide a separate disk for each Plaintiff’s response to each
13 numbered demand, totaling up to seventy-six disks. At the hearing, Defendant Veriscape stated
14 that four disks, one from each Plaintiff, would be acceptable so long as it is clear within each
15 disk, which of the electronic documents are responsive to which demands. Plaintiffs respond
16 that many of the documents are on multiple Plaintiffs’ computers and requiring each Plaintiff to
17 provide a separate production would result in unnecessary duplication of documents. Plaintiffs’
18 counsel also argues that his July 5, 2006 letter changed the terms of the agreement.

19 Plaintiffs’ rationale is flawed because the July 5 letter is, at most, an offer to form a new
20 agreement and Veriscape never accepted that offer. The terms of the agreement, however, are
21 not clear because Defendant Veriscape’s interpretations of the agreement in correspondence with
22 Plaintiffs’ counsel and in the motion are inconsistent. On June 19, 2006, Defendant Veriscape’s
23 counsel confirms “that a separate disk will be used for each Request to Produce.” (Defendant
24 Veriscape’s Motion to Compel, Exhibit E). In another letter, sent on August 24, 2006,
25 Defendant Veriscape asserts that Plaintiffs “had agreed to provide a separate disk for each
26 plaintiff.” (Defendant Veriscape’s Motion to Compel, Exhibit J). As the terms of the agreement
27 are contested, the court will not enforce the agreement.²

28 ² In order to create an enforceable agreement and avoid similar problems in the future, the
better practice would be to file a stipulation and proposed order setting out the agreed to terms.

1 Plaintiffs are required to provide a separate disk for each Plaintiff's responses to
2 Veriscape's request for production. Pursuant to Rule 34(b), the electronic documents shall be
3 produced as they are kept in the usual course of business or Plaintiffs shall organize and label the
4 documents to correspond with Veriscape's requests. At the hearing, Veriscape noted problems
5 accessing documents on the disk produced by Plaintiffs. Accordingly, the electronic documents
6 shall be produced without the use of any compression software and in the format requested by
7 Veriscape at the hearing.

8 2. Paper Document Production

9 On July 25, 2006, Plaintiffs produced a stack of papers containing paper documents
10 responsive to requests for production by Veriscape, Arntz, and Jacobs. Defendants' counsel
11 argues that Plaintiffs should organize and label the paper documents so that it is clear who
12 produced each document and to which of Veriscape's numbered demands it is responsive.

13 Defendant Veriscape provides no justification for its request that Plaintiffs do more than
14 is required by the Federal Rules. However, each Plaintiff was served with his or her own request
15 for production. By responding with paper documents from all four Plaintiffs as one unorganized
16 and unlabeled stack of papers, Plaintiffs failed to comply with the Federal Rules. Plaintiffs shall
17 respond to each set of requests separately and produce the paper documents as they are kept in
18 usual course of business or Plaintiffs shall organize the paper documents to correspond with
19 Veriscape's numbered demands.

20 3. Audio Recordings

21 At the hearing, Defendant Veriscape stated that thirteen audio recordings, which were
22 amongst the documents produced by Plaintiffs, were inaudible. Plaintiffs agreed to provide
23 Defendant Veriscape with new copies of the thirteen audio recordings.

24 III. CONCLUSION

25 For the foregoing reasons, IT IS HEREBY ORDERED that:

26 1. Veriscape's Motion to Compel Further Responses is Granted in Part in

27
28

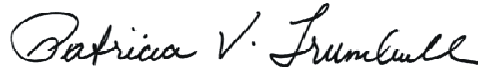
1 that Plaintiffs shall, no later than March 8, 2007, provide a separate
2 response from each Plaintiff to each set of requests for production;

3 2. Veriscape's Motion to Compel Further Responses is Denied in Part in that
4 Plaintiffs are not required to organize and label each Plaintiffs' response
5 to correspond with Veriscape's numbered demands; and
6

7 3. Plaintiffs shall provide Defendant Veriscape with new copies of the
8 thirteen audio recordings.

9 IT IS SO ORDERED

10 Dated: February 15, 2007

11 

12 PATRICIA V. TRUMBULL
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28